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IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

In re reissue application of:

Freeman et al.

Serial No.: 08/335,981
Filed: November 8, 1994
For: U.S. Patent 5,088,484

Group Art Unit: 3302
Examiner: Michael A. Brown

In re Freeman et al.

Reexamination Proceeding
Control Number. 90/003,586
Filed: October 3, 1994
For: U.S. Patent 5,088,484
Title: ORTHOPEDIC CASTING BANDAGE

#17

I, Francis A. Paintin, Registration No. 19,386
certify that this correspondence is being
deposited with the U.S. Postal Service as First
Class mail in an envelope addressed to the
Assistant Commissioner for Patents, Washington,
D.C. 20231.

On Feb 28, 1997


Francis A. Paintin Reg. No. 19,386

BOX RE-EXAM

Assistant Commissioner for Patents
Washington, DC 20231

Dear Sir:

REPLY BRIEF ON APPEAL

In accordance with 37 CFR §1.193(b), appellant responds
herein to the new points of argument raised by the Answer. Such
new points are the allegations in the Answer that:

However Buese clearly recites that the dye is
incorporated into the binder and that the binder can be
coated on the fabric (column 5, lines 10-13). Appellant
argues that Gasper does not disclose a coloring agent.
However it is old and well known in the art that an ace
bandage includes a tan dye therein. The ace bandage
also includes a blue dye indicating that the bandage is
an ace bandage. Thus, at least two dyes are
incorporated into the Gasper's reference.

The Buese '159 reference is the only reference applied against claims 1-5, 9, 12, 15, 19-20 and 23-24. The Examiner states that Buese shows that a dye can be incorporated into the binder and that the binder can be coated on the fabric. However, it must be noted that each of appellant's claims 1-30 require that a dye or coloring agent be applied while the fabric is in the "soft state." There is no suggestion in Buese that the fabric is in a soft state while the binder containing a dye is coated thereon.

The only references applied against claims 6-8, 10-11, 13-14, 16-18, 21-22, 25-27 and 29-30 are Buese '159 in view of Gasper. Buese has the deficiencies in its anticipatory value as mentioned above. The alleged "knowledge" as to dyes in Ace bandages allegedly incorporated into Gasper is the same as that alleged in the request for reexamination. It is significant that there was no effort therein to prove exactly when such "old and well known" use of such dyes in Ace bandages in the exact manner described first became known and available to the public. Since the reexamination requester apparently had searched the prior art for the references applied in the request, it is surprising that such a search did not reveal the date of first use of dyes in Ace bandages if such date were early enough to be effective as prior art.

It is respectfully suggested that either the requester or the Examiner should have authenticated the date of any such "old and well known" use. Further, the exact manner of such use of dyes and the time it began should have been determined before

the "art" was used to reject the claims on appeal. The Examiner has not made a prima facie case based on the alleged known prior use of dyes on Ace bandages. It is not the duty of the appellant to disprove the unsupported allegations. Since the Answer has not authenticated any date and manner of use in the alleged Ace bandage art, the Gasper reference remains entirely silent on the use of any dyes exactly as alleged in appellant's Brief on Appeal.

Even if the Gasper reference were held to have incorporated the alleged dying of Ace bandages, neither the Examiner nor the requester has suggested that such dying took place while the fabric was in a "soft state." This is an express requirement of claims 1-30 that is not suggested by the prior art.

As indicated in the Brief on Appeal, claims 31-33 have other limitations that distinguish them over the prior art.

It is respectfully suggested that all the rejections be reversed and that all claims on appeal be allowed.

Respectfully submitted,


Francis A. Paintin
Registration No. 19,386

Date: February 28, 1997

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Certificate of Service

As required by 37 CFR §1.550(e), a true copy of this paper has been forwarded this date by first-class mail to the reexamination requester at the following address:

John R. Schiffhauer
2200 Sand Hill Road, Suite 100
Menlo Park, CA 92025

Date Feb. 28, 1997


Francis A. Paintin